No.————

IN THE

# Supreme Court of the United States

**October Term, 1980.**

WILLIAM FINGER,

*Petitioner,*

*against*

JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT.

**Respondent's Brief in Opposition to Petition for a Writ of Certiorari to the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department.**

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**Respondent's Brief in Opposition to Petition for a Writ of Certiorari to the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department.**

**Preliminary Statement.**

Respondent's brief is submitted in opposition to the petition for a writ of certiorari, pursuant to the denial, by order dated October 9, 1980, of the New York Court of Appeals to grant leave to appeal, *Matter of Finger,* 51 N. Y. 2d 706, from the order of the Appellate Division of the

Supreme Court of the State of New York for the Second Judicial Department, which by order entered on August 11, 1980, disbarred petitioner. *Matter of Finger,* 76 A. D. 2d 403 (2nd Dept. 1980).

**Jurisdiction.**

Petitioner seeks to invoke the jurisdiction of this Court under Title 28 U.S.C. §1257(3).

**Statement of the Case.**

Substantial factual errors have been made in the petition for writ of certiorari, as well as omissions of critical points.

The Appellate Division, Second Judicial Department, in disbarring petitioner, sustained all the charges brought against him, as the referee found, except one minor allegation, under Charge Four, (3) (a) (b) (c), which was withdrawn by respondent, prior to the issuance of the referee's report.

The evidence adduced at the hearings before the referee, which led to petitioner's disbarment, was substantial. Succinctly put, it established the following:

CHARGE ONE:

Petitioner was retained in or about November, 1972, by William H. Blair and Jesse Johnson, who were the principals of Paula Screen Printing Corp., to recover $16,000 which had been paid to Precision Screen Machines Co., Inc., in accordance with the purchase of a screen printing machine.

In or about February, 1973, petitioner, without the knowledge of his clients, agreed to accept $6,801.40 in settlement.

On or about March 26, 1973, petitioner received the check of Precision Screen Machines Co., Inc., in the sum of $6,801.40, which was made payable to the order of "William L. Finger, Attorney for Paula Screen & Print Company."

Petitioner endorsed the check and turned it over to his wife, Anita J. Finger, who, on April 4, 1973, deposited it into her personal account at Peninsula National Bank, in Hewlett, New York. The money was thereafter withdrawn from the account.

The charge was sustained that petitioner converted his clients' funds to his own use.

The statement in the petition for writ of certiorari, that Jesse Johnson, Jr., was convicted of drug trafficking and that he served time in jail, is absolutely erroneous. Rather, it was his brother Robert Johnson, who was never called upon by either side, to testify in this proceeding.

Petitioner makes reference to a document signed by Jesse Johnson, which purportedly assigned his share of the $6,801.40 settlement check to petitioner. However, petitioner fails to note that the evidence adduced established that Jesse Johnson is illiterate and testified that he didn't know what he was signing when petitioner put it before him and that he never authorized petitioner to settle the matter, much less to take the proceeds thereof.

CHARGE TWO:

Petitioner was found guilty of having caused to be filed false and fraudulent affidavits of service in the Supreme

Court of the State of New York, Nassau County, as set forth in the report of the referee and the order of the Appellate Division, Second Judicial Department, dated August 11, 1980.

CHARGE THREE:

Petitioner was found guilty of having communicated with the wife of his client, the husband, during the course of a matrimonial action, without the knowledge or consent of the wife's attorney, as follows:

On or about August 5, 1975, petitioner on behalf of his client, George McLaurin, brought an action for divorce in the Supreme Court of the State of New York, Queens County, against the wife, Alease McLaurin.

When she failed to interpose an answer, the case was placed on the uncontested matrimonial calendar.

In or about September, 1975, Mrs. McLaurin, an unsophisticated woman, who was living on public assistance in Philadelphia, Pennsylvania, retained a Pennsylvania attorney, Joseph Fox, who in turn hired a New York attorney, Walter Black, to represent her.

On or about September 30, 1975, Black moved on Mrs. McLaurin's behalf to vacate the note of issue that had been filed and for leave to interpose an answer and to counterclaim. The motion was granted and shortly thereafter petitioner served a response on behalf of his client on Black.

The matter was placed on the contested matrimonial calendar.

On the morning of January 22, 1976, the action appeared on the trial calendar, but was adjourned since only

Black was present. Later that morning and after Black left, petitioner appeared in Court with Mr. McLaurin. Mrs. McLaurin also appeared. She and her husband, from whom she was separated at the time, accompanied petitioner back to his office.

Without the knowledge or consent of Mrs. McLaurin's attorney, at said meeting on January 22, 1976, petitioner caused a deed to be prepared, by which Mrs. McLaurin would convey her one-half interest in a house located in Jamaica, New York, to her husband. They owned the house as tenants by the entirety. Mrs. McLaurin testified that said house was her only asset.

After the meeting, petitioner mailed the deed to Mrs. McLaurin in Philadelphia, with a request that she execute the deed and return it to him, which she did.

Thereafter, Mrs. McLaurin discharged Black and proceeded without counsel.

CHARGE FOUR:

This charge was also sustained, in that petitioner knowingly attempted to impede and obstruct the legitimate investigation of complaints of professional misconduct against him by inducing William H. Blair to sign a letter addressed to the Queens County Bar Association, falsely advising that the complaint which alleged that he had failed to account for the $6,800, *supra*, was a gross misunderstanding and requesting that it be withdrawn. He thereafter returned $6,000 to Blair.

Further, he offered to pay Marvin Tabak $1,375 on condition that he send a letter to the Queens County Bar Association withdrawing his complaint and that said withdrawal be accepted. To that end, petitioner prepared

and induced Tabak to sign an escrow agreement which set forth that $1,375 would be deposited with Arthur Rothlein, to be turned over to Tabak upon the acceptance of the withdrawal of the complaint by the Queens County Bar Association.

On the basis of the aforesaid findings, pursuant to the evidence elicited at the hearings, petitioner was disbarred from the practice of law.

## POINT ONE.

### Petitioner was accorded due process of law.

Petitioner's claim that there has been undue delay in these proceedings is without merit.

The Grievance Committee of the Queens County Bar Association received the Tabak and Blair complaints in 1973. In 1974 extensive hearings were conducted by the Grievance Committee of the Queens County Bar Association concerning the Tabak matter, at which time witnesses gave testimony, including petitioner and documents were put into evidence.

Petitioner was represented at those hearings by Herbert Lyons, Esq., the same attorney who represented him at the hearings before the referee.

The minutes of the testimony before the Queens County Bar Association comprised almost one thousand pages.

Thereafter, in or about 1975, the Tabak and Blair matters were forwarded to petitioner for further proceedings.

The statement by petitioner that the Queens County Bar Association did not feel that the Blair complaint (Charge One) had any basis is not borne out by the record and is

apparently untrue, since it was forwarded in order to be pursued. In any event, petitioner was found guilty of conversion of escrow funds with respect thereto (Charge One).

The time that elapsed until the disciplinary proceeding was authorized is largely explained by virtue of the receipt by respondent of nineteen additional complaints of professional misconduct against petitioner during the period of March 2, 1975 and December 29, 1976. All of those complaints had to be investigated.

On or about December 20, 1977, respondent caused the formal charges to be served on petitioner. During the period 1977 until the disbarment order of August 11, 1980, an additional eight complaints were received against petitioner.

The case of *Kelly v. Greason,* 23 N. Y. 2d 368, 383 (1968), involved a passing of five years from the *filing of disciplinary charges* against an attorney until the Appellate Division order of suspension. (Emphasis supplied.) The Court of Appeals of the State of New York ruled in *Kelly* that:

> "Disciplinary proceedings are generally pursued at a cautious pace, because of the serious effects upon practitioners. Since the proceedings are not public, the effect of their prosecution is controlled. *The five years that passed from the filing of charges until the Appellate Division order of suspension,* although undesirable are not inordinate as these matters go. Moreover, much of the delay was due to Whalen himself in obtaining adjournments." (Emphasis supplied.)

In the case at bar, the charges in the disciplinary proceeding were served in 1977. Any delay thereafter was principally occasioned by petitioner himself. The three or four years that passed from the time that the Queens County Bar Association received the two complaints in or about 1973, held hearings in 1974, forwarded the matters to respondent in 1975 and the charges were served in 1977, is of course less than the five years that passed in *Kelly* where undue delay was not found to have existed.

A reading of *Kelly* leads to the conclusion that in an appropriate case, where delay has been excessive, as opposed to the instant matter, laches might apply.

Therefore, clearly the absurdity of petitioner's claim that constitutional rights do not attend disciplinary proceedings in New York is displayed.

A review of the evidence resulting in petitioner's disbarment, which was based on two extensive hearings at which he was represented by able counsel, manifests how flippant the statement by petitioner is that his loss of license to practice law was based, "* * * on no more than the whim and caprice of those who prosecuted the charges" (p. 17).

The allegation regarding Charge Two, *supra,* that the death of the process server, Haynes, prior to the hearings before the referee, prejudiced petitioner is incredible. Haynes was extensively cross examined by petitioner's counsel at the Queens County Bar Association hearings. Said attorney also represented petitioner at the hearings before the referee. No objection was ever raised of such alleged prejudice, prior to the filing of the instant petition for writ of certiorari.

Further, the testimony of five witnesses, including Haynes, given at the Queens County Bar Association, was

admitted into evidence before the referee, pursuant to stipulation of petitioner. A sixth witness who had testified at the Queens County Bar Association, Marvin Tabak, was produced by respondent at the request of petitioner who through his attorney conducted a lengthy cross examination.

Concerning Charge One, petitioner has raised a claim that he didn't urge before the Appellate Division, Second Judicial Department, prior to his disbarment; namely, that he had a retaining lien for the $6,801.40. This is patently absurd.

The referee found, and indeed the Appellate Division, Second Department, sustained his findings in full, that petitioner converted the $6,801.40 and without the knowledge or consent of his clients deposited same in his wife's personal account and then withdrew same for his own use. The evidence established, as described above, that, through fraud and deceit, petitioner secured the settlement. He had Jesse Johnson, Jr., sign the name of his father, Jesse Johnson, to a corporate release to effect the settlement. Jesse Johnson, Jr., testified that he didn't know what he was signing, but thought it had to do with his matrimonial problem, for which he had gone to see petitioner. Further, petitioner as notary, knowingly falsely acknowledged the signature of Jesse Johnson, Jr., to be that of his father.

When he received the check for the settlement for $6,801.40, petitioner then concealed same from his four law partners and deposited the check into his wife's personal account.

If the settlement hadn't been arrived at through fraud and deceit, at best, petitioner would have been entitled to perhaps his one-fifth share of one-third of the settlement,

as a partner of the firm of Teller, Schreiber, Goldenthal, Salaway and Finger, or approximately $450. However, in view of his egregious conduct in procuring the $6,801.40, there can be no other conclusion than that petitioner was clearly not entitled to hold said proceeds which he then converted. Accordingly, the argument that he had a retaining lien is at best the creation of a vivid imagination.

Petitioner's assertion regarding Charge Four that he should have had the same access to witnesses that respondent did is a simplistic argument. It ignores the evidence that these witnesses were approached by petitioner for the purpose of attempting to obstruct the investigation and induce them to fraudulently withdraw their complaints, since petitioner it develops had a great deal to fear by the investigation going forward.

## CONCLUSION.

**The petition for a writ of certiorari should be denied.**

Dated: Brooklyn, New York,
January 23, 1981.

Respectfully submitted,

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